

# SENATE BILL REPORT

## EHB 2357

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As of April 25, 2009

**Title:** An act relating to modifying nursing facility medicaid payments by clarifying legislative intent regarding the statewide weighted average, freezing case mix indices, and revising the use of the economic trends and conditions factor.

**Brief Description:** Concerning modifying nursing facility medicaid payments by clarifying legislative intent regarding the statewide weighted average, freezing case mix indices, and revising the use of the economic trends and conditions factor.

**Sponsors:** Representative Cody.

**Brief History:** Passed House: 4/25/09, 95-0.

**Committee Activity:** Ways & Means:

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Megan Atkinson (786-7446)

**Background:** Skilled nursing facilities (nursing homes) are licensed by the Department of Social and Health Services (DSHS) and provide 24-hour supervised nursing care, personal care, therapy, nutrition management, organized activities, social services, laundry services and room and board to three or more residents. Currently, there are 240 licensed facilities in the state with an average of 91 beds. Medicaid rates for nursing facilities are generally based on a facility's costs, its occupancy level, and the individual care needs of its residents. Payments to nursing facilities is the second largest budget unit within the Aging and Disability Services Program, and payments for in-home care is the largest. The Fiscal Year 2009 nursing home payments are estimated to total nearly \$520 million from all funds with approximately \$256 million coming from General Fund-State sources.

The current nursing home rate methodology is specified in statute (RCW 74.46) and is based on calculations for seven different components: direct care, therapy care, support services, operations, variable return, property (essentially a depreciation allowance), and a financing allowance. The rate calculation for these seven components are based on actual facility cost reports and are updated either annually or biennially, depending on the specific component. Additional factors that enter into the rate calculations are resident days (the total of the days in residence for all eligible residents), certain median lids (a percent of the median costs for all facilities in a peer group), and geographical location.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

RCW 74.46.421 imposes a rate ceiling, commonly referred to as the "budget dial." The budget dial is a single daily rate amount calculated as the statewide weighted average maximum payment rate for a fiscal year. This amount is specified in the Appropriations Act (for example, the budget dial for fiscal year 2009 is \$163.72) and DSHS must manage all facility specific rates so the budget dial is not exceeded.

Certain components of the nursing home rate formula can be increased by an inflation factor referred to as an "economic trends and conditions" factor. RCW 74.46 references the economic trends and conditions factors as specified in the Appropriations Act. Recently the Thurston County Superior Court, in *Life Care Center of America v. DSHS*, ruled that DSHS had incorrectly applied the economic trends and conditions factor in calculating rates for the 2007-09 biennium.

Finally, individual nursing facility rates vary based on resident care needs – oftentimes referred to as resident acuity or "case mix." Resident acuity is measured based on information gathered through a Minimum Data Set (MDS) information system required by the Centers for Medicare and Medicaid Services (CMS). The use of MDS information and how it is incorporated into the nursing home rate calculation is specified in statute. CMS is requiring implementation of a new MDS (MDS 3.0) effective October 1, 2010. While implementing the MDS 3.0, DSHS will not have access to case mix data.

**Summary of Bill:** Legislative intent is clarified regarding the nursing home payment rates as calculated pursuant to RCW 74.46.

It is clarified that economic trends and conditions factors, as specified in the Appropriations Act, are not compounded.

DSHS is directed to implement MDS 3.0, notify contractors in advance of the implementation, and essentially freeze the case mix data used in rate calculations while DSHS is implementing MDS 3.0 and further directs DSHS to retroactively adjust facility rates for any case mix changes that occurred while implementing MDS 3.0.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.